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Supreme Court, U.S.
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Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-1978

CHEVRON OIL COMPANY
THE CALIFORNIA COMPANY DIVISION,
versus
Petitioner,

ROYAL INSURANCE COMPANY, EXCESS-SURPLUS LINES, INC., and/or UNDERWRITERS AT LLOYD'S, LONDON and MR. MINOR CHERAMIE and/or CHERAMIE BOTRUC NO. 5, INC.,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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New Orleans, Louisiana 70112
504 523-5116

MESSRS. McLOUGHLIN, BARRANGER, PROVOSTY AND MELANCON
Of Counsel.

INDEX

	Page
Jurisdiction	2
Opinions Below	2
Questions Presented	3
Statement	4
Specification of Errors Urged	5
Reasons Relied On For Granting The Writ	6
1- The Court below has decided a question of law in conflict with an applicable decision of this Court and has departed so far from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision.	6
2- The Court below has decided important questions of law which have not been, but should be, settled by this Court.	13
Conclusion	15
Proof of Service	16
Appendix	1a

CITATIONS

Constitution of the United States of America:	
Fifth Amendment (Due Process)	14
Fourteenth Amendment (Equal Protection)	14

CITATIONS (Continued)

Cases: Page

Bergan v. International Freighting Corp., 254 F.2d 231 (1958) 12

Bolling et al. v. Sharpe, et al., 347 U.S. 497 (1954) 14

Field Line v. South Atlantic S.S. Line, 201 F. 301 (1912) 12

General Talking Pictures Corp. v. Western Electric Co., Inc., et al., 304 U.S. 175 (1937) 2

Goett v. Union Carbide Corp., 361 U.S. 340 (1960) 2

International Drilling Co., N.V. v. M/V DORIEFS, et al., 291 F. Supp. 479 (1968) 7

Jewelers Mutual Ins. Co. v. Balough, 272 F.2d 889 (1959) 12

Mondella v. S.S. ELIE V, 223 F. Supp. 390 (1963) 7

Munson S.S. Line v. Glasgow Nav. Co., 235 F. 64 (1916), certiorari denied 243 U.S. 643 ..... 7, 13, 15

Saridis v. S.S. PARAMARINA, 216 F.Supp. 794 (1962) 12

Steward Machine Co. v. Davis, 301 U.S. 548 (1937) 14

The Tungus v. Skovgaard, 358 U.S. 588 (1959) 2

CITATIONS (Continued)

Statutes: Page

Federal Rules of Appellate Procedure, Rule 34 ..... 3, 6, 14, 15

United States Code Annotated Title 28, Section 1254 (1) 2

MISCELLANEOUS

Gilmore & Black, The Law of Admiralty, § 4-17, p. 208 12

Walford's Translation of Aristotle's Politics, Book IV, Chapter VI 14

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

TO THE HONORABLE THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Your petitioner, Chevron Oil Company The California Company Division, respectfully prays that a writ of certiorari be issued out of and under the seal of this Court to review the decision of the United States Court of Appeals for the Fifth Circuit in No. 31,130 rendered

on October 19, 1971, which affirmed an earlier Judgment casting petitioner by the District Court of the United States for the Eastern District of Louisiana, New Orleans Division, in Civil Action No. 15,982G.

JURISDICTION

Jurisdiction to review this case upon writ of certiorari is authorized and created by U.S.C.A. Title 28, Section 1254(1). See: *General Talking Pictures Corporation* versus *Western Electric Company, Inc., et al.*, 304 U.S. 175 (1937); *The Tungus* versus *Skovgaard*, 358 U.S. 588 (1959); and, *Goett* versus *Union Carbide Corp.*, 361 U.S. 340 (1960).

The opinion of the United States Court of Appeals for the Fifth Circuit was rendered October 19, 1971. A petition for rehearing en banc was filed by petitioner on December 3, 1971 and was denied in a per curiam opinion on January 12, 1972. Motions were made for the stay of mandate pending the filing of this petition for certiorari and were granted on January 27, 1972 and March 3, 1972.

OPINIONS BELOW

The Judgment and denial of post trial motions by the District Court of the United States are printed in the Appendix; and, the opinion and denial of the petition for rehearing en banc by the United States Court of Appeals for the Fifth Circuit are printed in the Appendix.

QUESTIONS PRESENTED

1- Irrespective of the negligence found in the Trial Court, was Chevron Oil Company The California Company Division, as a named assured in the insurance policies issued by Royal Insurance Company, Excess-Surplus Lines, Inc., and Underwriters at Lloyd's, London, for the operations of the M/V CHERAMIE BOTRUC NO. 5, entitled to be protected and indemnified by these insurers for claims arising out of an accident occurring to a crew member of and aboard this vessel?

2- Did Royal Insurance Company, Excess-Surplus Lines, Inc., and Underwriters at Lloyd's, London, waive rights of subrogation against their assured Chevron Oil Company The California Company Division under the pertinent provisions of the insurance policies for the operations of the M/V CHERAMIE BOTRUC NO. 5?

3- Was the loading on and discharge of cargo from the M/V CHERAMIE BOTRUC NO. 5 the duty of the shipowner, to be supervised by its Master and not subject to his delegation or substitution of this responsibility to someone else?

4- Was Chevron Oil Company The California Company Division entitled to be heard in oral argument of its appeal before the United States Court of Appeals for the Fifth Circuit, under the provisions of F.R.A.P., Rule 34?

STATEMENT

Plaintiff, Mr. Porphire Lanasse, sued Chevron Oil Company The California Company Division (hereinafter called Chevoil), and other defendants, for damages arising out of an April 25, 1964 accident, which occurred on the M/V CHERAMIE BOTRUC NO. 5 (hereinafter called BOTRUC). At the time thereof, plaintiff was a deckhand aboard and was offloading cargo from the BOTRUC in the course and scope of his employment by and under the control, direction and supervision of the independent contractor, Cheramie Botruc No. 5, Inc. (hereinafter called Cheramie).

In the response to the Complaint and after being denied the proffer of its protection and indemnity, Chevoil was compelled and forced to assert a third-party complaint against Mr. Lanasse's employer, Cheramie, and the insurers Royal Insurance Company, Excess-Surplus Lines, Inc., and/or Underwriters at Lloyd's London (hereinafter called Royal and Lloyd's), in the capacity of a named assured in the protection and indemnity policies of insurance issued by Royal and Lloyd's, (App. pp. 4a-12a) as well as under the indemnity provision in the Time Charter. (App. pp. 1a-3a)

Just prior to the trial on April 24, 1970, the demands of Mr. Lanasse were compromised and paid by Cheramie, Royal and Lloyd's, resulting in a stipulation being entered into by these third-party defendants with Chevoil, wherein the District Court of the United States ultimately tried the insurance and indemnity issues raised in the third-party complaint. Thereafter, the

matter was taken under submission and on September 17, 1970, the District Court of the United States rendered a Judgment solely casting Chevoil for the amount paid plaintiff in compromise and denying the insurance and indemnity demands against Cheramie, Royal and Lloyd's arising out of the pertinent provisions in the insurance policies and Time Charter, from which an appeal was filed in the United States Court of Appeals for the Fifth Circuit.

In affirming the lower Court, the United States Court of Appeals for the Fifth Circuit held in its October 19, 1971 opinion that, notwithstanding the finding that Chevoil was a named assured in the insurance policies issued by Royal and Lloyd's for the operations of the BOTRUC, nevertheless, it was not entitled to the protection and indemnity thereof because Chevoil was found to be solely at fault. A petition for rehearing en banc was timely filed, but promptly denied in a January 12, 1972 per curiam opinion.

SPECIFICATION OF ERRORS TO BE URGED

The United States Court of Appeals for the Fifth Circuit erred and misdirected itself, as follows:

1- In holding that, irrespective of the negligence found in the Trial Court, Chevoil, as a named assured in the insurance policies issued by Royal and Lloyd's for the operations of the BOTRUC, was not entitled to be protected and indemnified by these insurers for claims arising out of an accident to a crewmember of and aboard this vessel.

2- In failing to hold as a matter of law that Royal and Lloyd's had waived rights of subrogation against their assured Chevoil under the pertinent provisions of the insurance policies for the operations of the BOTRUC.

3- In holding under the admiralty and general maritime law that the loading on and discharge of cargo from the BOTRUC was not the duty of the shipowner to be supervised by its Master subject to his delegation or substitution of this obligation to someone else.

4- In holding as a matter of law that Chevoil was not entitled to be heard in oral argument of its appeal before the United States Court of Appeals for the Fifth Circuit under the provisions of F.R.A.P., Rule 34.

REASONS RELIED ON FOR GRANTING THE WRIT

1- The United States Court of Appeals for the Fifth Circuit has decided a question of law in conflict with an applicable decision of this Court and has departed so far from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision.

Simply stated, the end result of this Court's decision is that, although as a matter of law the Time Charterer of a vessel cannot be held legally responsible to an injured third-party involved in an accident in her serv-

ice,[1] it is not entitled to protection, indemnity and waiver of subrogation rights by being named as an assured for the negligence found by the Trial Court.

It is undisputed and the record clearly establishes that as an assured,[2] Chevoil was entitled to the same protection, indemnity and waiver of subrogation rights for liability arising out of the management, navigation and/or operations of the BOTRUC, as its owner Cheramie. Furthermore, at the time of the accident, Mr. Lanasse, while offloading freight as the deckhand aboard and in the employ of the vessel, was injured in its service and sued the owner and petitioner alleging joint acts of negligence, and unseaworthiness of the ship.

The only possible connection to the accident by Chevoil was the use of its stiff-leg crane on a deck atop the fixed and immobile artificial island identified as Bay Marchand "Z" Structure approximately 50 or 60 feet directly above the vessel, whose winchman was directed and signaled by plaintiff. This was affirmatively testified to by Mr. Lanasse, as follows:

---

[1] *Munson S.S. Line* versus *Glasgow Nav. Co.*, 235 F. 64 (1916), certiorari denied 243 U.S. 643; *International Drilling Company, N.V.* versus *M/V DORIEFS, et al.*, 291 F.Supp. 479 (1968), at page 488; and, *Mondella* versus *S.S. ELIE V*, 223 F. Supp. 390 (1963).

[2] *"While the vessel(s) named herein is/are working for any of the following the one for whom the vessel(s) is/are working at any given time is named as an additional assured during that particular time and all rights of subrogation hereunder are waived with respect to the one for whom the vessel(s) is/are working at that particular time:*

\- - - -

California Oil Company". (App. pp. 8a, 11a)

"Q — did they?

A. As soon as I hooked up, I gave him a signal pick it up.

Q As soon as you hooked it up, you gave him a signal?

A Yes, and tried to get out of the way.

Q Is that when he started picking it up?

A Yes.

Q But that was before you had a chance to get out of the way?

* * * *

A Yes.

Q So, in other words, you didn't wait until you got out of the way before you gave your signal. You gave your signal right away, is that right? You were standing right next to the welding machine when you gave the signal to the operator to pick up, is that right?

A No. I started to move while I gave the signal.

MR. MELANCON:

Let the record show that the witness lifted his right hand and circled his index finger two or three times when he just gave the response to the question.

Q Is that the signal that you gave?

A Yes, to pick it up.

MR. MELANCON:
Waving his hand above his head once again and circling his index finger of the right hand.

Q How far were you from the welding machine when you gave that signal?
A I'd say three or four feet.
Q That's when he picked it up?
A Yes.
Q Did anybody tell you to give that signal or you just knew to give it yourself?
A I knew to give it myself.
Q When you gave the signal he started to pick up, is that right?
A Yes.
Q And what happened then?
A The machine start swinging and he hit against the railing and I was still trying to get out of the way and it came and hit me in the knee.
Q Which way did the machine swing?
A First?
Q Yes.
A Towards the starboard side.
Q So that would have been away from you?
A Yes.
Q Then it swung back?
A It swung back.
Q And that's when it hit you, when it swung back?
A Yes.
Q Because you hadn't had an opportunity to move clear, is that right?
A Yes.

Q How close were you to the pallet boards when the machine hit you?
A How close — I'd say two to three feet away.
Q So you really hadn't moved very far before it hit you?
A No, didn't have no chance.
Q When the machine hit you, what happened?
A Knocked me down on the mud pallet.
Q What part of the machine hit you?
A The bottom part of the machine.

* * * *

Q You hooked it, gave the signal and immediately the welding machine began to go up and at that same point, you were trying to get away from it, is that correct?
A Yes."

Moreover, plaintiff testified, the seas were running 5 to 6 feet, causing the vessel to rise, fall and roll,[3] yet

---

[3] "Q Can you tell me the amount of movement to the boat? Was it equal to the five to six foot seas that were involved? Was it moving that much up and down?
A Yes, it was rocking pretty bad.
Q Now, when you say, rocking, was this an up and down movement?
A No, sideways.
Q Kind of a rolling action?
A Rolling, yes.
Q Can you give us some estimate, in your own words, as you have experienced this, as to what the amount of movement was? Was it a foot; was it two feet, five feet or what?

Captain Abby Joseph Cheramie considered the unloading routine, delegated the BOTRUC's duty and responsibility therefor to an uneducated, inexperienced deck-crew, and remained inside the cabin, utterly failing to manage, navigate and operate his ship by holding it in position below the stiff-leg crane in order to prevent the suspended cargo from swinging and striking Mr. Lanasse on its deck. Otherwise, the accident would not have occurred.

It is submitted that this simple factual situation does not suggest "one of those seagoing donnybrooks" or a "scenario", as recited by the United States Court of Appeals for the Fifth Circuit in its October 19, 1971 opinion. (App. pp. 36a, 38a) In this connection the business relationship between Chevoil and the vessel owner continues unabated to this date, obviously manifesting a mutually friendly, profitable and satisfactory

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A Three to four feet.
Q Three to four feet movement of the boat. Was that up and down movement?
A No, it was rolling.
Q Did this rolling movement have any connection with the accident that you referred to, with respect to the welding machine falling on you or striking you?
A Yes.
Q What connection did it have, sir?
A The boat was rolling and the machine hit on the right-hand side of the railing and was swinging. That's why it struck me.
Q If the Cheramie BO TRUC No. 5 had not been rolling, as you suggest, the number of feet that you indicate, would, in your estimation, this accident have occurred, the way that you described it?
A. No."

arrangement and nowhere in the record can it be found that Chevoil unilaterally "produced and directed" what transpired.

The practical application and meaning of the pertinent provisions in the Time Charter and insurance policies for the operations of the vessel dictate that the circumstances surrounding the accident is the exact and precise reason for their existence. The insurers collected premiums therefor, yet contrary to their representations they have repeatedly and unconscionably refused to honor their obligations. This is the true issue in the case and the contracts must be read in the light of practical business demands and risks.[4].

The task being performed at the time of the accident aboard the vessel, injuring its deckhand, was the unloading of freight unto the "Z" Structure. In this connection and in charge of the ship's management, navigation and/or operation, Captain Cheramie remained in ultimate command of the situation and, as a matter of law, his supervisory duties were not subject to delegation or substitution to someone else.[5] Therefore, it is submitted that the record clearly establishes the vessel participated to a much greater extent than as simply "a condition or locale for the 'accident' ", as suggested by the United States Court of Appeals for

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[4] *Jewelers Mutual Ins. Co.* versus *Balough*, 272 F.2d 889 (1959).

[5] *Field Line* versus *South Atlantic S.S. Line*, 201 F. 301 (1912); *Bergan* versus *International Freighting Corp.*, 254 F.2d 231 (1958); and, *Saridis* versus *S.S. PARAMARINA*, 216 F. Supp. 794 (1962). Also see: Gilmore & Black, The Law of Admiralty, §4-17, p. 208.

the Fifth Circuit on page 9 of the opinion. (App. pp. 43a) Without the rise and fall of the uncentered vessel below the stiff-leg crane, directed and signaled by Mr. Lanasse and unobserved by Captain Cheramie, the only deck officer, this accident would not have occurred.

In this connection, portions of the opinion in *Munson*, supra, are most pertinent for therein a personal injury claim was involved, coupled with a Time Charter of a vessel and a negligent winchman. The United States Court of Appeals for the Second Circuit, at page 67 stated, as follows:

> "Now follows a most material inquiry viz: Who in point of law was doing the unloading, and therefore for whom was the negligent winchman acting? We have no doubt that, in the absence of a contract or of a custom binding upon the parties to the contrary, *it is as much the duty of the shipowner to load and discharge the cargo as it is to carry it between the loading and discharge ports.*" (Emphasis added).

2- The Court below has decided an important question of law which has not been, but should be, settled by this Court.

Inasmuch as all appellate briefs were filed by April 16, 1971 and the United States Court of Appeals for the Fifth Circuit after more than six months of study, without allowing oral argument, was unable to reach a unanimous conclusion in its October 19, 1971 opinion, it is quite apparent this case was of such a character

that it was not properly the subject of the arbitrary Summary Calendar. Moreover, the Trial Court remained confused, for in the denial of post-trial motions, it went on to state such disposition was "Without Prejudice". (App. pp. 32a)

Appellant contends that a proper reading of F.R.A.P., Rule 34, directs that the case be argued unless otherwise agreed by the parties and is within the intent and meaning of the Fifth (Due Process) and Fourteenth (Equal Protection) Amendments to the Constitution. Of course, while there is no equal protection clause specifically applicable to the Federal Government inasmuch as the first ten Amendments are not inclusive thereof, the Courts have repeatedly held that individual discrimination in the application of federal laws would amount to a denial of due process. See discussions in *Steward Machine Company* versus *Davis*, 301 U.S. 548 (1937); and, *Bolling et al.* versus *Sharpe, et al.*, 347 U.S. 497 (1954). Of interest in *Bolling* on page 499, was the observation by this Court

> "- - - - the concepts of equal protection and due process, both stemming from our American ideal of fairness, are not mutually exclusive."

This great simple principle is most eloquently described in Book IV, Chapter VI, of Walford's translation of Aristotle's Politics, where in part it states:

> "The most pure democracy is that which is called so principally from the equality which prevails in it: for this is what the law in that

> state directs, that the poor shall be in no greater subjection than the rich; and that the supreme power shall not be lodged with either of these, but that both shall share it alike. For if liberty and equality, as some persons suppose; are chiefly to be found in a democracy, it must be most so, by every department of government being alike open to all; - - -."

CONCLUSION

Obviously, this litigation and the judgments complained of, involve questions of exceptional importance to the extent that a conflict now exists with the opinion by the United States Court of Appeals for the Second Circuit in *Munson*, supra; fail to give legal effect to the simple wording in the pertinent insurance policies and Time Charter; and, the provisions of F.R.A.P. Rule 34 were ignored and not followed.

It is respectfully submitted that a writ of certiorari should be granted to review and reverse the decision by the United States Court of Appeals for the Fifth Circuit in No. 31,130, as well as the Judgment by the District Court of the United States, Eastern District of Louisiana, New Orleans Division, Civil Action No. 15,982G.

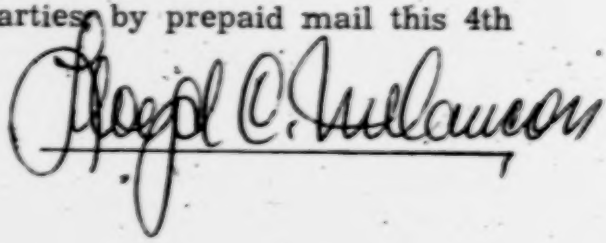
New Orleans, Louisiana, April 4, 1972.

Counsel for Petitioner

MESSRS. McLOUGHLIN, BARRANGER,
PROVOSTY AND MELANCON
Of Counsel

PROOF OF SERVICE

In furtherance of the Rules, I have served three copies of the above and foregoing petition for writ of certiorari upon all parties by prepaid mail this 4th day of April, 1972.



APPENDIX

TIME CHARTER

No. 7605

Closed file

BOTRUC 5, Inc., (Name), owner of the

UTILITY-CARGO (Type of Craft) Botruc 5 (Name),

official number 268791, hereby charters the said vessel, along with her tackle, apparel, equipment, furniture, and stores, to THE CALIFORNIA COMPANY from January 1, 1964, to until released, unless sooner cancelled.

During the life of this Charter, the vessel is to be used in

Inland and the Gulf of Mexico
(Describe Waters)

The vessel will be subject to charterer's use 24 hours each day.
(If less than 24 hours per day, show overall clock time, for example 8:00 A.M. to 8:00 P.M. — 12 hours.)

Owner hereby warrants that the said vessel is now, and at all times during the life of this charter will be, maintained by owner at owner's expense properly staunch, strong, and in all respects seaworthy, and in good repair and running condition. Hire shall be payable at the rate of $ 295.00 per day during the life of this charter but shall not be payable for any period during which the vessel is unfit or unable to perform its service under this agreement. in excess of an average of one calendar day per charter month (computed annually or at the end of this charter, whichever be sooner. Owner shall man, operate, and navigate the vessel. The vessel shall prosecute its trips and perform its services with dispatch, as directed by the charterer, but responsibility for the management and navigation and operation of the vessel shall remain at all times in the owner, same as when trading for owner's account; and nothing herein contained shall be construed as making this a demise. Owner shall remain responsible for the payment of all taxes and for compliance with all statutes, ordinances and regulations, Federal, State, Parish or Municipal, in any way directly or indirectly connected with the possession, navigation, manning, management and operation of the vessel. Owner hereby agrees to indemnify and hold harmless The California Company against all claims for taxes or for penalties or fines, as well as against any and all claims for damages, whether to person or property, and howsoever arising in any way directly or indirectly connected with the possession, navigation, management, and operation of the vessel. During the life of this charter, owner will, at its own expense, provide and maintain insurance covering all liabilities which might arise from the possession, management, manning, navigation and operation of the vessel, which said policies shall be in form and amount, and with companies as required and approved by The California Company; and on which policies The California Company shall, if it so elects, be included as party assured.

The vessel shall be made available for use of The California Company at Leesville and shall be redelivered to owner at Leesville, La. on the termination of this charter or the effective date of cancellation hereof. The California Company shall not be responsible under any circumstances whatsoever for any loss or damage to the hull, machinery, apparel, furniture or appurtenances of the vessel, howsoever such loss or damage might be caused.

This charter may be cancelled at any time by either party by the giving of Verbal notice to the addresses shown below, the said cancellation to take effect 3 days after the notice, after which no hire shall accrue. Invoices for hire due shall be mailed in quadruplicate at the end of each month to The California Company, Harvey, Louisiana, and hire so due shall become payable within ten days after receipt of such invoice.

Fuel, oil, rope greases and lubricants for the operation of the vessel under this charter shall be furnished at the expense of The California Company

When the Master or members of the crew take meals at The California Company's field eating places Owner well be billed therefore, unless done at request of The California Company.

Owner

Box 775 Golden Meadow, La.
Address

THE CALIFORNIA COMPANY

By
Charterer

P. O. Box 128, Harvey, Louisiana
Address

Date released 11-7-64
signed

Date: December 28, 1963

Supercedes Charter No. 2717

CC-373

Lee Charter 7th 15 Sept 63 Replaced by Botruc 15

RECEIVED
NOV 9 1964
Leesville Office

INVOICE RECORD

INVOICE NUMBER	DATE	PERIOD COVERED (INCLUSIVE DATES) FROM	TO	AMOUNT	REMARKS
	1-26	1-1-	1-25-64	7375.00	7-113-L
	2-26	1-26	2-25-64	9145.00	3-217-L
	3-26-64	2-26	3-25	8555.00	4-140-L
	4-26-64	3-26	4-25	9145.00	5-215-L
	5-26-64	4-26	5-25	8850.00	6-172-L
	6-26-64	5-26	6-25	9145.00	7-338-L
	7-26-64	6-26	7-25	8850.00	8-421-L
	8-26-64	7-26	8-25	9145.00	9-373-L
	9-26-64	8-26	9-25	9145.00	10-314-L
	10-26-64	9-26	10-25	8850.00	11-203-L Drain 15 Ac
	11-26-64	~~10-26~~ 10-26	11-√	3835.00	3-0611-

THE CALIFORNIA COMPANY
A Division of California Oil Company

TIME CHARTER

BAREBOAT CHARTER NO. 2717

DATED December 28, 1963

FOR CHARTER OF Botruc 5

OWNER shall maintain a true and correct set of records pertaining to work performed. OWNER further agrees to retain all pertinent records relating to work performed for a period of not less than two years after completion thereof. OWNER shall not pay any commissions or fees, or grant any rebates, to any employee or officer of The California Company and The California Company may, upon request, have an independent audit made by a nationally known firm of certified public accountants, of any and all records of the OWNER relative to the work performed hereunder for the sole purpose of determining whether there have been any such commissions, fees, or rebates; provided that said accountants shall agree not to disclose to The California Company any information secured in the course of such audit which does not bear on its above-mentioned purpose.

Notwithstanding the above no other change in terms and conditions as set out in the reference agreement is implied and said agreement remains in effect as written.

Accepted BOTRUC 5

The California Company

Date

THE FUNDERBURK AGENCY, INC.
HOUMA, LOUISIA

GEORGE E. [illegible] General Agents
821 Liberty Bank Bldg
New Orleans 12, Lou

P&I
1955

1 Assured LEFTY CHERAMIE BOAT COMPANY, INC., AS PER FORM
2
3 Address Box 775, Golden Meadow, Louisiana
4
5 Loss, if any, payable to as per form
6
7 From the 1st day of October 19 63 Beginning and ending
8 Until the 1st day of October 19 64 at noon Standard Time at place of issuance.
9 Amount hereby insured $ 245,000.00 as per schedule Rate % Premium $
10 In consideration of the premium and subject to the warranties, terms and conditions herein mentioned, this Com-
11 pany hereby undertakes to pay up to the amount hereby insured and in conformity with lines 5 and 6 hereof,
12 such sums as the assured, as owner of the Vessels as per Schedule
13 shall have become legally liable to pay and shall have paid on account of:

14 Loss of life of, or injury to, or illness of, any person;

15 Hospital, medical, or other expenses necessarily and reasonably incurred in respect of loss of life of, in-
16 jury to, or illness of any member of the crew of the vessel named herein;

17 Loss of, or damage to, or expense in connection with any fixed or movable object or property of whatever
18 nature;

19 Costs or expenses of, or incidental to, the removal of the wreck of the vessel named herein when such
20 removal is compulsory by law; provided, however, that there shall be deducted from such claim the value
21 of any salvage recovered from the wreck by the assured;

22 Fines and penalties, including expenses reasonably incurred in attempting to obtain the remission or mitiga-
23 tion of same, for the violation of any of the laws of the United States, or of any state thereof, or of any
24 foreign country; provided, however, that this Company shall not be liable to indemnify the assured against
25 any such fines or penalties resulting directly or indirectly from the failure, neglect, or default of the as-
26 sured or his managing officers or managing agents to exercise the highest degree of diligence to prevent a
27 violation of any such laws;

28 Costs and expenses, incurred with this Company's approval, of investigating and/or defending any claim
29 or suit against the assured arising out of a liability or an alleged liability of the assured covered by this
30 policy.

31 Notwithstanding the foregoing this Company will not pay for:

32 The first $ 250.00 of claims covered by lines 14, 15, 16, 28, 29 and 30 nor for the first $ 250.00
33 of claims covered by any other parts of this policy, but, in no event shall the deductible exceed $ 250.00
34 each occurrence. (For the purpose of this clause, each occurrence shall be treated separately, but a series
35 of claims hereunder arising from the same occurrence shall be treated as due to that occurrence.)

36 Loss of, or damage sustained by the vessel named herein or her tackle, apparel, furniture, boats, fittings,
37 equipment, stores, fuel, provisions or appurtenances;

38 Loss resulting from cancellation of charters, non-collectibility of freight, bad debts, insolvency of agents
39 or others, salvage, general average, detention, loss of use or demurrage of the vessel named herein;

40 Any loss, damage, expense or claim with respect to any vessel or craft in tow of the vessel named herein
41 and/or cargo thereon; provided this exclusion shall not apply to salvage services rendered in an emergency
42 to a ship or vessel in distress, nor to loss of life and/or injury to, or illness of any person;

43 Any claim for loss of, damage to, or expense in respect of cargo on board the vessel named herein;

44 Any claim arising directly or indirectly under the Longshoremen's and Harbor Workers' Compensation
45 Act or any workmen's compensation act of any state or nation;

46 Any liability assumed by the assured beyond that imposed by law; provided however that if by agree-
47 ment, or otherwise, the assured's legal liability is lessened, then this Company shall receive the benefit of
48 such lessened liability.

49 Any loss, damage or expense sustained by reason of any taking of the vessel by requisition or other-
50 wise, civil war, revolution, rebellion, or insurrection, or civil strife arising therefrom, capture, seizure,
51 arrest, restraint or detainment, or the consequences thereof or of any attempt thereat; or sustained in con-
52 sequence of military, naval or air action by force of arms; or sustained or caused by mines or torpedoes or
53 other missiles or engines of war, whether of enemy or friendly origin; or sustained or caused by any weapon
54 of war employing atomic fission or atomic fusion or radioactive material; or sustained in consequence of
55 placing the vessel in jeopardy as an act or measure of war taken in the actual process of a military engage-
56 ment, including embarking or disembarking troops or material of war in the immediate zone of such engage-
57 ment; and any such loss, damage and expense shall be excluded from this policy without regard to whether
58 the assured's liability in respect thereof is based on negligence or otherwise, and whether in time of peace
59 or war.

60 Any loss, damage, expense or claim collectible under the Taylor 1953 (Rev. 60) including
Collision Liability/Towers Liability endorsement.
61 form of policy, whether or not the vessel named herein is actually covered by such insurance and regardless
62 of the amount thereof.

(Continued on following pages)

Warranted that in the event of any occurrence which could result in a claim under this policy the assured promptly will notify this Company upon receiving notice thereof and forward to this Company as soon as practicable all communications, processes, pleadings or other legal papers or documents relating to such occurrence.

Whenever required by this Company, the assured shall aid in securing information and evidence and in obtaining witnesses and shall cooperate with this Company in the defense of any claim or suit or in the appeal from any judgment.

This Company shall have the option of naming the attorneys who shall represent the assured in the prosecution or defense of any litigation or negotiations between the assured and third parties concerning any claim covered by this policy, and shall have the direction of such litigation or negotiations. If the assured shall fail or refuse to settle any claim as authorized by this Company, the liability of this Company shall be limited to the amount for which settlement could have been made. The assured shall at the option of this Company permit this Company to conduct, with an attorney of this Company's selection, at this Company's cost and expense and under its exclusive control, a proceeding in the assured's name to limit the assured's liability to the extent, and in the manner provided by the present and any future statutes relative to the limitation of a shipowner's liability.

Liability hereunder in respect of loss, damage, costs, fees, expenses or claims arising out of or in consequence of any one occurrence is limited to the amount hereby insured. (For the purpose of this clause each occurrence shall be treated separately, but a series of claims hereunder arising from the same occurrence shall be treated as due to that occurrence.)

The assured shall not make any admission of liability, either before or after any occurrence which could result in a claim for which this Company may be liable. The assured shall not interfere in any negotiations of this Company, for settlement of any legal proceedings in respect of any occurrence for which this Company may be liable under this policy; provided, however, that in respect of any occurrence likely to give rise to a claim under this policy, the assured is obligated to and shall take such steps to protect his and/or the Company's interests as would reasonably be taken in the absence of this or similar insurance.

Upon making payment under this policy this Company shall be vested with all of the assured's rights of recovery against any person, corporation, vessel or interest and the assured shall execute and deliver such instruments and papers as this Company shall require and do whatever else is necessary to secure such rights.

No action shall lie against this Company for the recovery of any loss sustained by the assured unless such action is brought within one year after the entry of any final judgment or decree in any litigation against the assured, or in the event of a claim without the entry of such final judgment or decree, unless such action is brought within one year from the date of the payment of such claim.

No claim or demand against this Company under this policy shall be assigned or transferred, and no person shall acquire any right against this Company by virtue of this insurance without the express consent of this Company.

It is expressly understood and agreed if and when the assured has any interest other than as a shipowner in the vessel named herein, in no event shall this Company be liable hereunder to any greater extent than if the assured were the sole owner and entitled to petition for limitation of liability in accordance with present and future law.

Where the assured is, irrespective of this policy, covered or protected against any loss or claim which would otherwise have been paid by this Company, under this policy, there shall be no contribution or participation by this Company on the basis of excess, contributing, deficiency, concurrent, or double insurance or otherwise.

The navigation limits in the policy covering the hull, machinery, etc. of the vessel named herein are considered incorporated herein.

This insurance shall be void in case the vessel named herein, or any part thereof, shall be sold, transferred or mortgaged, or if there be any change of management or charter of the vessel, or if this policy be assigned or pledged, without the previous consent in writing of this Company.

Either party may cancel this policy by giving ten days' notice in writing; if at the option of this Company pro rata rates, if at the request of the assured short rates, will be charged—and arrival.

6a

Endorsement to be at ed to and made a part of Polic

of the Royal Insurance Company, Limited

issued to LEFTY CHERAMIE BOAT COMPANY, INC., AS PER FORM

Vessels as per Schedule

It is hereby understood and agreed that lines 19, 20 and 21 of the P&I 1955 Form attached to this policy are amended to read:

> "Cost or expense of, or incidental to, the removal or destruction of, or attempt to remove or destroy the wreck of any vessel and/or its cargo, if any, minus the value of the wreck and/or its cargo, if any, which has been saved;"

All other terms and conditions remain unchanged.

October 1, 19 63

GEORGE S. KAUSLER, LIMITED
GENERAL AGENTS
SUITE 821 HIBERNIA BUILDING
NEW ORLEANS

K-1888M4658

THE FUNDERBURK AGENCY, INC.
HOUMA, LOUISIANA

- S C H E D U L E -

Vessel	Amount Hereby Insured
STEEL DIESEL UTILITY BOATS:	
"BO-TRUCK NO. 2"	$ 50,000.00
"CHERAMIE BO-TRUC NO. 4"	70,000.00
"CHERAMIE BO-TRUC NO. 5"	125,000.00
	$245,000.00

Each vessel to be deemed a separate insurance.

In respect of Steel Diesel Utility Boat "BO-TRUCK NO. 2" only:

Assured: LEFTY CHERAMIE BOAT COMPANY, INC.

Loss Payee: LEFTY CHERAMIE BOAT COMPANY, INC. AND STATE BANK AND TRUST COMPANY OF GOLDEN MEADOW, LOUISIANA

In respect of Steel Diesel Utility Boat "CHERAMIE BO-TRUC NO. 4" only:

Assured: L & M BO-TRUC RENTAL, INC.

Loss Payee: L & M BO-TRUC RENTAL, INC.

In respect of Steel Diesel Utility Boat "CHERAMIE BO-TRUC NO. 5" only:

Assured: CHERAMIE BO-TRUC NO. 5, INC., AMERICAN MARINE CORPORATION AND THE WHITNEY NATIONAL BANK OF NEW ORLEANS

Loss Payee: CHERAMIE BO-TRUC NO. 5, INC., AMERICAN MARINE CORPORATION AND THE WHITNEY NATIONAL BANK OF NEW ORLEANS

* * * * * * * * * * * * * * *

This policy also covers the affiliated companies of the assured, be they owners, subsidiaries, or inter-related companies and as bareboat charterers, and/or charterers, and/or sub-charterers, and/or operators, and/or in whatever capacity.

Permission is granted to charter.

Assent given for all waivers of recovery made before or after the inception of this policy but prior to a loss.

Permission granted to enter into released or decreased liability towing contracts.

It is understood and agreed that while the vessel(s) is performing services for Shell Oil Company, the insurers hereunder hereby waive all rights of subrogation or recovery against Shell Oil Company and, where the vessel(s) is performing services in a joint operation, against such other parties in the joint operation with Shell; and specifically agree that no effort will be made by them or on their behalf to recover from Shell Oil Company or any parties in such joint operation with Shell, by any method whatsoever, assignment, loan receipt, beneficiary action or otherwise, for any loss covered by this policy. As used in this paragraph "parties in the joint operation with Shell" means those parties who have contracted in writing with Shell to combine with working interests in a mineral lease or leases, or portions thereof, for carrying on operations in the exploration for and the production of oil, gas and other minerals.

While the vessel(s) named herein is/are working for any of the following the one for whom the vessel(s) is/are working at any given time is named as an additional assured during that particular time and all rights of subrogation hereunder are waived with respect to the one for whom the vessel(s) is/are working at that particular time:

Century Geophysical Corporation
California Oil Company

In the event of cancellation or of material change in policy coverage, it is understood and agreed that ten (10) days prior notice will be given to:

Shell Oil Company
California Oil Company.

Attached to and Made part of Policy No. M 208781 of the ROYAL INSURANCE COMPANY, LIMITED.

THE FUNDERBURK AGENCY, INC.
HOUMA, LOUISIANA

114 Attached to and made part of Policy No. 4 208781 of the ROYAL INSURANCE COMPANY, LIMITED.

The Funderburk Agency, Inc.
Insurance since 1885
P. O. BOX 767
308 CHURCH STREET HOUMA, LA.
Telephone: UPtown 2-5282

K B A 5000 8-63 D

THE FUNDERBURK AGENCY, INC.
HOUMA, LOUISIANA

THE FUNDERBURK AGENCY, INC.
HOUMA, LOUISIANA

EXCESS - SURPLUS LINES, INC.

Unsurpassed Facilities for Placing Insurance in Foreign Markets

818 HIBERNIA BUILDING
NEW ORLEANS 12, LA.

The Funderburk Agency, Inc.
Insurance since 1885
P. O. BOX 767
308 CHURCH STREET HOUMA, LA.
Telephone: UPtown 2-5282

Cover Note No. 13278
Certificate of Coverage

Acting upon the instructions of LEFTY CHERAMIE BOAT COMPANY, INC., AS PER FORM through THE FUNDERBURK AGENCY, INC., HOUMA, LOUISIANA

we confirm that we have placed insurance as described below with ~~certain Companies and/or~~ Underwriters at Lloyd's, London, for

LEFTY CHERAMIE BOAT COMPANY, INC., AS PER FORM
(assured)
Box 775, Golden Meadow, Louisiana
(address)

upon Excess Collision Liability, Towers Liability and Protection & Indemnity Risks
from October 1, 1963, Noon, C. S. T.
to October 1, 1964, Noon, C. S. T.

Loss, if any, payable to as per form

Outline of coverage:

Excess Collision Liability, Towers Liability and Protection and Indemnity Risks in respect of vessels as per schedule attached.

It is understood and agreed that Excess-Surplus Lines, Inc. is not an insurer hereunder and that it shall not be liable for any loss or claim arising out of the insurance which it has placed as indicated above. It is further understood and agreed that, unless otherwise indicated on the reverse hereof, the terms and conditions of the policy or policies of the insurance which will be issued are those as may be approved by the Underwriters.

DATED AT New Orleans, Louisiana, this 1st day of October 1963

H-1071

EXCESS-SURPLUS LINES, INC.

THE FUNDERBURK AGENCY, INC.
HOUMA, LOUISIANA

67 SM 1268R

Permission granted to enter into released or decreased liability towing contracts.

It is understood and agreed that while the vessel(s) is performing services for Shell Oil Company, the insurers hereunder hereby waive all rights of subrogation or recovery against Shell Oil Company and, where the vessel(s) is performing services in a joint operation, against such other parties in the joint operation with Shell; and specifically agree that no effort will be made by them or on their behalf to recover from Shell Oil Company or any parties in such joint operation with Shell, by any method whatsoever, assignment, loan receipt, beneficiary action or otherwise, for any loss covered by this policy. As used in this paragraph "parties in the joint operation with Shell" means those parties who have contracted in writing with Shell to combine the working interests in a mineral lease or leases, or portions thereof, for carrying on operations in the exploration for and the production of oil, gas and other minerals.

While the vessel(s) named herein is/are working for any of the following the one for whom the vessel(s) is/are working at any given time is named as an additional assured during that particular time and all rights of subrogation hereunder are waived with respect to the one for whom the vessel(s) is/are working at that particular time:

Century Geophysical Corporation
California Oil Company

In the event of cancellation or of material change in policy coverage, it is understood and agreed that ten (10) days prior notice will be given to

Shell Oil Company
California Oil Company.

Attached to and made part of Cover Note No. 13278 of the EXCESS-SURPLUS LINES, INC.

THE FUNDERBURK AGENCY, INC.
HOUMA, LOUISIANA

- S C H E D U L E -

$500,000.00 excess of primary Collision Liability, Towers Liability and Protection and Indemnity Risks as is more specifically described in primary policies Nos. M 208780 and M 208781 or their renewal or rewrite thereof, issued by the Royal Insurance Company, Limited, in respect of the following vessels, each vessel to be deemed a separate insurance.

Vessel	Primary Coverage
STEEL DIESEL UTILITY BOATS:	
"BO-TRUCK NO. 2"	$ 50,000.00
"CHERAMIE BO-TRUC NO. 4"	70,000.00
"CHERAMIE BO-TRUC NO. 5"	125,000.00
	$245,000.00

In respect of Steel Diesel Utility Boat "BO-TRUCK NO. 2" only:

Assured: LEFTY CHERAMIE BOAT COMPANY, INC.

Loss Payee: LEFTY CHERAMIE BOAT COMPANY, INC. AND STATE BANK AND TRUST COMPANY OF GOLDEN MEADOW, LOUISIANA

In respect of Steel Diesel Utility Boat "CHERAMIE BO-TRUC NO. 4" only:

Assured: L & M BO-TRUC RENTAL, INC.

Loss Payee: L & M BO-TRUC RENTAL, INC.

In respect of Steel Diesel Utility Boat "CHERAMIE BO-TRUC NO. 5" only:

Assured: CHERAMIE BO-TRUC NO. 5, INC., AMERICAN MARINE CORPORATION AND THE WHITNEY NATIONAL BANK OF NEW ORLEANS

Loss Payee: CHERAMIE BO-TRUC NO. 5, INC., AMERICAN MARINE CORPORATION AND THE WHITNEY NATIONAL BANK OF NEW ORLEANS

• • • • • oo oo oo • • • • •

This Cover Note also covers the affiliated companies of the assured, be they owners, subsidiaries, or inter-related companies and as bareboat charterers, and/or charterers, and/or sub-charterers, and/or operators, and/or in whatever capacity.

Permission is granted to charter.

Assent given for all waivers of rights of recovery made before or after the inception of this Cover Note but prior to a loss.

JUDGMENT

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

PORPHIRE LANASSE

versus

CIVIL ACTION
No. 15,982
SECTION "G"

CALIFORNIA COMPANY, TRAVELERS INSURANCE COMPANY, CHERAMIE BROS., INC., OFFSHORE MARINE EQUIPMENT RENTAL

This matter having come for trial and the Court having heard and considered the evidence, the briefs and argument of counsel, and having entered Findings of Fact and Conclusions of Law, it is now:

ORDERED, ADJUDGED AND DECREED that there be judgment herein in favor of Cheramie Bo-Truc No. 5, Inc., Minor Cheramie, Royal Insurance Company, Excess-Surplus Lines, Inc. and Underwriters at Lloyds, dismissing the third-party complaint of Chevron Oil Company, The California Company Division;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that there be judgment herein in favor of Cheramie Bo-Truc No. 5, Inc. and against Chevron Oil

Company, The California Company Division, for the full sum of THIRTEEN THOUSAND AND NO/100 ($13,000.00) DOLLARS in reimbursement of the amounts paid by Cheramie Bo-Truc No. 5, Inc. in settlement of plaintiff's claim herein, together with interest thereon from May 4, 1970;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that there be judgment herein in favor of Cheramie Bo-Truc No. 5, Inc. and against Chevron Oil Company, The California Company Division, in the full sum of TWO THOUSAND EIGHT HUNDRED NINETY SIX AN 16/100 ($2,896.16) DOLLARS, with interest thereon from date of judgment as reimbursement of those sums paid by Cheramie Bo-Truc No. 5, Inc. for mainteance and cure due plaintiff;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the complaint filed herein against Travelers Insurance Company and Offshore Marine Equipment Rental be and the same is hereby dismissed, with prejudice;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Chevron Oil Company, The California Company Division, bear all costs of this proceeding.

New Orleans, Louisiana, this 17th day of Sept. 1970.

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

PORPHIRE LANASSE

CIVIL ACTION

versus

No. 15982
SECTION G

CALIFORNIA COMPANY, TRAVELERS INSURANCE COMPANY, CHERAMIE BROS., INC., OFFSHORE MARINE EQUIPMENT RENTAL

The complaint filed in this proceeding on behalf of Porphire Lanasse asserted a claim against The California Company, Travelers Insurance Company, Cheramie Bros. Inc. and Offshore Marine Equipment Rental. Travelers Insurance Company and Offshore Marine Equipment Rental did not appear or answer and no default was taken against either of them. Accordingly, the action against those defendants is dismissed.

The plaintiff was a seaman employed aboard an offshore supply vessel known as BO-TRUC No. 5. He was injured during the discharge of a welding machine from the stern deck of the supply vessel to a platform owned by The California Company (properly, Chevron Oil Company, The California Company Division, and hereinafter referred to as "Chevron"). The suit against Cheramie Bros., Inc. (properly, Cheramie Bo-Truc No. 5, Inc., and hereinafter referred to as "Cheramie") was based upon the Jones Act and the general

maritime law, including the warranty of seaworthiness. The suit against Chevron was based upon maritime tort. Chevron answered the complaint and then filed a third-party complaint against Cheramie and/or Minor Cheramie, alleged to the owners or operators of BO-TRUCK No. 5, and against its underwriters, Royal Insurance Company, Excess-Surplus Lines, Inc. and Underwriters at Lloyds. The third-party defendants answered denying liability. Cheramie likewise answered the complaint of the plaintiff denying liability. Finally, Cheramie filed a cross-claim and/or counterclaim against Chevron seeking indemnity and recovery of amounts paid for maintenance and cure, and Chevron answered denying liability.

Prior to trial, the claim of the plaintiff was settled for the sum of $13,000.00, which was stipulated by all parties to be fair and reasonable. The settlement was funded by Cheramie under a stipulation pursuant to which it was agreed that payment would not be an admission of liability and that the amount paid would constitute plaintiff's damages for the purposes of adjudicating the pending issues in the litigation. The case thereafter proceeded to trial, without a jury, for a determination by the Court of (1) the liability, if any, of Cheramie and/or Chevron to the plaintiff; (2) the validity of the indemnity claims asserted as between Cheramie and Chevron; and (3) the applicability of the insurance afforded Chevron under the policy of Protection and Indemnity insurance covering the supply vessel BO-TRUC No. 5.

After hearing the evidence, which included the plaintiff's deposition testimony, and having heard oral argument and reviewed the briefs of counsel, the Court now makes the following:

FINDINGS OF FACT

1.

On the day of the accident involved herein, plaintiff, Porphire Lanasse, was a seaman employed by Cheramie as a deckhand-cook aboard the BO-TRUC No. 5.

2.

The BO-TRUC No. 5 was owned and operated by Cheramie and was a typical offshore supply vessel, approximately 80 feet in length, having its pilothouse at the very forward portion of the bow and leaving the entire afterdeck available for use in stowing supplies, drill pipe, and other related equipment.

3.

The BO-TRUC No. 5 was being operated pursuant to a written time charter between Cheramie (owner) and Chevron. The time charter provided in pertinent part as follows:

> "Owner hereby warrants that the said vessel is now, and at all times during the life of this charter will be, maintained by owner at own-

er's expense properly staunch, strong, and in all respects seaworthy, and in good repair and running condition. * * *

"Owner shall man, operate, and navigate the vessel .* * *Owner hereby agrees to indemnify and hold harmless The California Company against all claims ..., as well as against any and all claims for damages, whether to person or property, and howsoever arising in any way directly or indirectly connected with the possession, navigation, management, and operation of the vessel. During the life of this charter, owner will, at its own expense, provide and maintain insurance covering all liabilities which might arise from the possession, management, manning, navigation and operation of the vessel, which said policies shall be in form and amount, and with companies as required and approved by The California Company; and on which policies The California Company shall, if it so elects, be included as party assured."

This was the only written agreement between Chevron and Cheramie.

4.

At the time of the accident, the BO-TRUC No. 5 was covered by a policy of Protection and Indemnity insurance, written on the standard P. & I.-1955 form, and issued by Royal Insurance Company as primary

insurer, with excess coverage placed through Excess-Surplus Lines, Inc. Cheramie was the named assured in the policies and Chevron was an additional assured under an endorsement which provided, in part:

> "While the vessel(s) named herein is—are working for any of the following, the one for whom the vessel(s) named herein is/are working at any given time is named as an additional assured during that particular time ..."

5.

Under the terms of the policy of insurance insofar as this case is concerned, the underwriters of the CHERAMIE BO-TRUC No. 5 undertook to indemnify an assured for:

> "Such sums as the assured, as owner of the [BO-TRUC No. 5] shall have become legally liable to pay and shall have paid on the account of: * * * loss of life or, for injury to, or illness of any person."

6.

On April 25, 1964, the BO-TRUC No. 5 was working in the Gulf of Mexico and had been ordered by Chevron to a fixed production platform designated as Zulu structure. Portable water was to be pumped to the structure from the supply vessel and a welding machine was to be moved from the west to the east side of the structure. The Zulu structure was a double platform and it was impossible for the crane on the

west side of the platform to reach the east side. It was for that reason that the BO-TRUC No. 5 was to be utilized in transferring the welding machine.

7.

The BO-TRUC No. 5 arrived at the Zulu structure at 12:10 P.M. The log of the vessel reflects that it was working in the area of Zulu structure until 2:50 P.M. Upon arrival at the structure the weather was clear, there was a little wind, and there were small swells running in a south or southeasterly direction. The BO-TRUC No. 5 moved first to the west side of the platform and was positioned starboard side to the structure in order to discharge the potable water. She was heavily ballasted and riding well in the seas. The only cargo on her deck were three mud pallets which had been restacked 10 to 12 feet aft of the wheelhouse in order to make room for the welding machine.

8.

The welding machine was lowered to the after deck of the vessel by use of the Chevron crane on the west side of Zulu platform. The crane was operated by Earl Plaisance, an employee of Chevron. No difficulty was encountered in lowering the welding machine to the deck of the vessel. After the welding machine was safely aboard, the plaintiff and a fellow crewmember. Gillis Vedros, removed the hook of the crane from the eye at the top of the frame or guard rail which encircled the welding machine, and the crane operator lifted the hook back to the platform.

9.

The BO-TRUC No. 5 thereafter moved from the west to the east side of the platform maneuvering around the northern end and into position with its starboard side to the east side of the structure. The vessel was held steady against the platform except for a slight rise and fall with the swells.

10.

The Chevron crane operator, Earl Plaisance, moved to the crane on the east side of the structure in order to lift the welding machine from the deck of the vessel. From his position at the crane controls he had a full and unobstructed view of the deck of the BO-TRUC No. 5. When the vessel was in position, Plaisance lowered the hook on the crane line and it was caught by Vedros who in turn handed it to the plaintiff. The plaintiff then latched the hook into the eye on top of the welding machine.

11.

There are certain conflicts in the evidence as to what transpired after the hook of the crane was latched on to the eye at the top of the welding machine. However, the Court finds as a fact that the crane operator observed the plaintiff place the hook in the eye and while the plaintiff was still looking up at the crane operator with both hands on the machine, the crane operator began lifting. By his own admission the crane operator stated it would have been safe practice to have per-

mitted the plaintiff time within which to move out of the way. The Court likewise finds this to be the fact.

12.

The evidence is uncontradicted that the weather was not too rough to perform the job safely and the pallet boards on the deck of the supply boat were not positioned so as to interfere with the operation.

13.

Prior to the accident in question, the crane operator had had limited experience. He had no formal training as a crane operator and had operated the crane aboard Zulu structure only eight or nine times before he was permitted to operate the crane without supervision or assistance. Prior to the accident in question, he had a total of approximately 13 to 14 hours experience operating the crane, and this inexperience obviously contributed to his negligent actions during the operation which caused the plaintiff's injury.

14.

The testimony of the crane operator was to the effect that he had not stopped lifting the welding machine at full throttle until it reached the top of the platform. The Court finds, however, that the testimony of the plaintiff, the Captain of the BO-TRUC No. 5, and Gillis Vedros, as well as the corroborating statements which were utilized by counsel during cross-examination, is more credible and worthy of belief. The preponderance

of the credible evidence is that the crane operator stopped lifting the welding machine after it was 5 to 6 inches from the deck, causing it to swing over against the railing of the boat and then back to the position where Lanasse was attempting to get out of the way. The welding machine knocked Lanasse down and over against the pallet boards stacked on the deck. The crane operator then dropped the machine to the deck momentarily causing it to lean over on top of the plaintiff. The plaintiff was a huge man and the evidence reflects that it was only his superior strength which prevented him from being crushed to death.

15.

The sole proximate cause of the injury to the plaintiff was the negligent operation of Chevron's crane by Chevron's employee, Earl Plaisance. No one aboard BO-TRUC No. 5 was negligent nor was there any unseaworthy condition which in any way contributed to the plaintiff's injury.

16.

On January 6, 1965, Chevron addressed a letter to Cheramie notifying Cheramie of the claim. On January 22, 1965, the agent for the P. & I. Underwriters replied advising that should Chevron become involved in the claim, it would receive "the usual protection afforded an assured under Royal Insurance Company, Policy PM 208781, covering the Utility Boat CHERAMIE BO-TRUC No. 5."

17.

On January 27, 1965, counsel for the P. & I. Underwriters addressed a letter to Chevron advising that Chevron would be protected in accordance with the terms and provisions of the P. & I. policy.

18.

Suit was filed on behalf of the plaintiff in October, 1965, and served upon Chevron on October 11, 1965. On October 19, 1965, counsel for Chevron addressed a letter to counsel for the P. & I. Underwriters forwarding a copy of the suit. On October 29, 1965, counsel for the P. & I. Underwriters replied advising again that Chevron would be protected under the terms and conditions of the policy but would not be protected with respect to liability based upon the negligence of those personnel operating the crane on the Zulu platform. On November 3, 1965, counsel for the P. & I. Underwriters again confirmed the intention to go forward with the defense of Chevron pursuant to the terms and conditions of the policy, but pointing out that if there was an exposure to Chevron unrelated to the vessel BO-TRUC No. 5, it would be in the best interest of Chevron to retain additional counsel.

19.

On November 10, 1965, counsel for Chevron addressed separate letters to Royal Insurance Company, Excess-Surplus Lines, Inc. and Cheramie calling upon them to defend, hold harmless and indemnify Chevron

"without qualification". On November 17, 1965, counsel for P. & I. Underwriters again replied offering to protect Chevron in accordance with the provisions and the terms of the policy of insurance. This offer was thereafter rejected and Chevron's attorneys continued handling its defense from that point forward.

20.

As a result of the injuries sustained by the plaintiff, Cheramie was required to pay the sum of $2,896.16 for maintenance and cure.

21.

There was no evidence to indicate that the third-defendant, Minor Cheramie, was either individually involved in the operation of the BO-TRUC No. 5, guilty of any negligence, or in any other manner responsible to indemnify Chevron for the matters involved in this litigation.

CONCLUSIONS OF LAW

1.

This Court has jurisdiction of this cause and venue is properly laid in the Eastern District of Louisiana.

2.

On April 25, 1964, plaintiff, Porphire Lanasse, was employed by Cheramie as a seaman and member of

the crew of the BO-TRUC No. 5, and as such entitled to pursue a remedy against Cheramie under the Jones Act, 46 U.S.C. §688, and the general maritime law.

3.

No negligence on the part of Cheramie contributed to any extent to the plaintiff's injuries, nor was the BO-TRUC No. 5 in any respect unseaworthy. Accordingly, Cheramie is not liable to the plaintiff under either the Jones Act, 46 U.S.C. 688, or the general maritime law.

4.

The sole proximate cause of the plaintiff's injuries was the negligence of Earl Plaisance, the crane operator employed by Chevron, and accordingly, Chevron is solely liable to the plaintiff for his damages which have been stipulated to be in the sum of $13,000.00.

5.

Under the terms of the time charter agreement between Chevron and Cheramie, Cheramie did not undertake to indemnify Chevron against the consequences of its own negligence since such intent was not "unequivocally expressed in the plainest of words." *Batson Cook v. The Industrial Steel Erectors*, 257 F.2d 410(5 Cir. 1958); *Standard Oil Company of Texas v. Wampler*, 218 F.2d 768(5 Cir. 1955); *U. S. v. Seckinger*, 408 F.2d 146(5 Cir. 1969), reversed on other grounds

397 U.S. 203, 90 S.Ct. 880(1070); *Despaux v. The California Co.*, 286 F.Supp. 588(E.D. La. 1968); and *Mills v. Fidelity and Casualty Company of New York*, 226 F.Supp. 786 (W.D.La. 1964). As a matter of contract law, Chevron cannot recover from Cheramie the amount of the plaintiff's damages or the attorneys' fees and costs incurred in defending the claim of the plaintiff. Having found Chevron's negligence to be the sole proximate cause of the plaintiff's injuries, neither is Chevron entitled to recovery from Cheramie under any theory of tort indemnity.

6.

Chevron's liability to the plaintiff is not grounded on Chevron's use or operation of the BO-TRUC No. 5, but is rather grounded on its status as the owner of a stationary drilling platform in the Gulf of Mexico and the employer of the platform's crane operator. As asserted by the plaintiff, the liability of Chevron was alleged to be based upon the negligence of "employee or employees of Chevron" who were working on the platform. The coverage afforded by the Protection and Indemnity policy covering the supply vessel BO-TRUC No. 5 is limited to the assured's liability "as owner" of the insured vessel, and therefore, Chevron is not afforded coverage under the policy except with respect to fault on the part of the BO-TRUC No. 5 or the negligence of its crew. Rather clearly, the policy by its plain terms does not extend coverage to Chevron as a platofrm owner or as employer of a negligence crane operator working on the platform. *U. S. Fire Insurance Company v. The Gulf States Marine and*

Mini. Co., 268 F.2d 565 (5 Cir. 1959). See also *Hains v. Glazer Construction Company*, 209 F.Supp. 355 (W.D. La. 1962); *Conners Marine Co., Inc. v. Northwestern Fire and Marine Ins. Co.*, 16 F. Supp. 626 (S.D.N.Y. 1936), affirmed 88 F.2d 637 (2d Cir. 1937); *Harbor Tug and Barge Co. v. Zurich General Accident and Liability Co.*, 29 F. Supp. 163 (N.D. Cal. 1938); *Employees Mutual Liability Insurance Co. of Wisconsin v. Aetna Insurance Co.*, 254 F.Supp. 263 (E.D. Mich. 1966). This precise point was decided in the case of *In The Matter* of Barge BW-1933 Fire, 1868 AMC 2738 (Arbitration, 1967). The underwriters' refusal to defend and indemnify Chevron for its liability as owner of the Zulu platform or as the employer of the negligent crane operator was justified in law. The offer by the P. & I. Underwriters to defend Chevron as owner and/or operator of the vessel under the terms and provisions of the policy, was the sole obligation owed Chevron.

7.

The Court specifically rejects the contention by Chevron that it is isolated from tort liability to the plaintiff because the plaintiff was the employee of a subcontractor performing work which was part of the trade, business and/or occupation of Chevron, thus bringing Chevron within the protection of L.S.A.-R.S. 23:1061. There was no evidence that the plaintiff's activities were part of the trade, business or occupation of Chevron. More important, however, the plaintiff was a Jones Act seaman injured on the navigable waters of the United States so that the law of the State of Louisiana is inapplicable. The plaintiff's rights are to

be determined by federal law exclusive of any state remedies. *Lindgren v. United States*, 281 U.S. 38, 60 S.Ct. 207(1930); *Gillespie v. United States Steel Corporation*, 379 U.S. 148, 85 S.Ct. 308 (1964). Further, the impact of the tort committed upon the plaintiff had its effect on the navigable waters of the United States making the general maritime and/or federal law the applicable law. *The PLYMOUTH*, 70 U. S. (3 Wall.) 20 36 (1866); *Hess v. United States*, 361 U. S. 314, 318, 80 S.Ct. 341, 345 (1960); *Tullis v. Fidelity and Casualty Company of New York*, 397 F.2d 22, 24 (5 Cir. 1968); *Weinstein v. Eastern Airlines, Inc.*, 316 F.2d 758, 763 (3 Cir. 1963), cert. den. 375 U. S. 940; *Bergeron v. Aero Associates, Inc.*, 213 F.Supp. 936 (E.D. La. 1963).

8.

Cheramie paid to or for the account of plaintiff the sum of $2,896.16 as maintenance and cure. This was an obligation incurred by Cheramie as a result of its status as shipowner and employer of the plaintiff. As the Court has found, the obligation was incurred not by reason of fault on the part of Cheramie, but rather as a result of the negligence of Chevron as owner of Zulu structure and employer of the negligent crane operator. Chevron is therefore responsible to Cheramie for the amounts paid in maintenance and cure. *Loffland Bros. Company v. Roberts*, 386 F.2d 540 (5 Cir 1967), cert. denied 389 U. S. 1040 (1968); *Drewery v. Daspit Bros. Marine Divers, Inc.*, 317 F.2d 425, 428 (5 Cir. 1963); *Standard Oil Co. v. Robins Drydock and Repair Co.*, 32 F.2d 182, 183-184 (2d Cir. 1929); *West Coast Term. Co. v. Luckenbach S. S. Co.*, 349 F.2d 586, 570-57

(9 Cir. 1965); *Hanks v. California Company*, 280 F. Supp. 730, 739 (W.D. La. 1967), citing *Smith v. Brown & Root Marine Operators, Inc.*, 243 F. Supp. 130 (W.D. La. 1965), aff'd. *per curiam* 376 F.2d 852 (5 Cir. 1967); *Savoie v. Apache Towing Co.*, 282 F.Supp. 876, 879-880 (E.D. La. 1968); *Richardson v. St. Charles - St. John Baptist Bridge and Ferry Authority*, 284 F.Supp. 709, 716 (E.D. La. 1968); *Valentine v. Wiggins*, 242 F. Supp. 870, 872 (E.D. N. C. 1965); *Myles v. Quinn Menhaden Fisheries, Inc.*, 302 F.2d 146, 1962 A.M.C. 1626, 1631 (5 Cir. 1962); *Gore v. Clearwater Shipping Corp.*, 378 F.2d 584, 587 (3 Cir. 1967); *Jones v. Waterman SS Corp.*, 155 F.2d 992, 997(3 Cir. 1946); *United States of American v. Tug MANZANILO*, 190 F.Supp. 229, 232-233 (D. Ore. 1960), reversed on other grounds 310 F.2d 220, 223 (9 Cir. 1962); Gilmore and Black, *The Law of Admiralty* (1957) §6-18 at pages 276-277.

9.

In accordance with the foregoing findings of fact and conclusions of law, a judgment shall be entered herein dismissing the third-party complaints of Chevron against Cheramie Bo-Truc No. 5, Inc., Minor Cheramie, Royal Insurance Company, Excess-Surplus Lines, Inc. and Underwriters at Lloyds. Judgment shall be entered in favor of Cheramie Bo-Truc No. 5, Inc. and against Chevron Oil Company, The California Company Division, in the amount of $2,896.16, together with interest thereon from date of entry of judgment. The complaint of the plaintiff has been dismissed pursuant to settlement, and in accordance with the stipulation of the parties there shall be judgment in favor of Cher-

amie Bo-Truc No. 5, Inc. and against Chevron Oil Company, The California Company Division, in the amount of $13,000.00 as reimbursement of the amounts paid in settlement of the plaintiff's claim, together with interest from May 4, 1970 (the date said payment was made), and for all costs of this proceeding.

New Orleans, Louisiana
September 17, 1970

(Signed) JAMES A. COMISKEY
UNITED STATES DISTRICT JUDGE

SEAMAN CASE

SECTION G

UNITED STATES DISTRICT COURT

Jury demand date:

JURY

JURY TRIAL REQUESTED IN ORIGINAL COMPLAINT

TITLE OF CASE

PORPHIRE LANASSE

versus

CALIFORNIA COMPANY, TRAVELERS INSURANCE COMPANY, CHERAMIE BROS., INC., OFFSHORE MARINE EQUIPMENT RENTAL

ATTORNEYS
For plaintiff:
James A. Wysocki
John R. Martzell
Ungar & Dulitz
328 Chartres St.

For defendant:
Lloyd C. Melancon
720 Hiberna Bank Building
for The California Co.

George A. Frilot, III & Jack Green
Lemle & Kelleher
1836 NBC Bldg. for Cheramie Bo-Truc No. 5, Inc., Minor Cheramie, Royal Ins. Co., Ltd., Excess-Surplus Lines, Inc., and Underwriters at Lloyds — 525-1241

WEDNESDAY, OCTOBER 21, 1970
10:00 A.M.

MOTION BY CHEVRON OIL CO. THE CALIFORNIA CO. DIVISION TO OPEN THE SEPTEMBER 17, 1970 JUDGMENT, TAKE ADDITIONAL TESTIMONY, MAKE NEW FINDINGS AND CONCLUSIONS AND DIRECT ENTRY OF A NEW JUDGMENT: AND ALTERNATIVELY FOR A NEW TRIAL.

Argued

DENIED without prejudice

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 31130
Summary Calendar

D. C. Docket No. CA 15,982

PORPHIRE LANASSE,
Plaintiff-Appellee,

versus

TRAVELERS INSURANCE COMPANY, ET AL.,
Defendants-Appellees,

and

THE CALIFORNIA COMPANY,
Defendant-Third Party
Plaintiff-Appellant,

versus

ROYAL INSURANCE COMPANY,
EXCESS-SURPLUS LINES, INC., and/or
UNDERWRITERS AT LLOYD'S, LONDON, ET AL,
Third Party Defendants-Appellees.

Appeal from the United States District Court for the
Eastern District of Louisiana

Before BROWN, Chief Judge, INGRAHAM and RONEY, Circuit Judges.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Eastern District of Louisiana, and was taken under submission by the Court upon the record and briefs on file, pursuant to rule 18;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed;

It is further ordered that defendant-third party plaintiff-appellant pay to third party defendants-appellees, the costs on appeal to be taxed by the Clerk of this Court.

October 19, 1971

Issued As Mandate:

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 31130
Summary Calendar*

PORPHIRE LANASSE,
Plaintiff-Appellee,

versus

TRAVELERS INSURANCE COMPANY, ET AL,
Defendants-Appellees,

and

THE CALIFORNIA COMPANY,
Defendant-Third Party
Plaintiff-Appellant,

versus

ROYAL INSURANCE COMPANY,
EXCESS-SURPLUS LINES, INC., and/or
UNDERWRITERS AT LLOYD'S, LONDON, ET AL,
Third Party Defendants-
Appellees

Appeal from the United States District Court for the Eastern District of Louisiana,

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(October 19, 1971)

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*Rule 18, 5 Cir.; See Isbell Enterprises, v. Citizens Casualty Co. of New York, et al., 5 Cir., 1970, 431 F.2d 409.

Before BROWN, Chief Judge, INGRAHAM and RONEY, Circuit Judges.

BROWN, Chief Judge: This is another one of those seagoing donnybrooks in which all generously claim that someone else must bear the burden of amounts paid to a seaman for injuries sustained during a typical offshore drilling operation in Louisiana shelf waters. Aside from the usual complexities arising from impleaders, cross-claims, direct actions against underwriters and demands for indemnity, it is also a case in which the party that wrote the contract claims it does not mean what it says and means what it does not say.

The now-to-be-forgotten victim (Porphire Lanasse) was a crew member on the utility tender Bo-Truc No. 5,[1] then under time charter to Chevron.[2] By stipulation Cheramie settled the claim brought by Lanasse as a full-fledged bluewater seaman against Cheramie and on diversity against Chevron. The case as submitted to the District Court, lacking only an ailing plaintiff, was for the determination of who should bear any, all or part of the loss.[3]

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[1]Owned by Cheramie Bo-Truc No. 5, Inc.

[2]Chevron Oil Company (The California Company Division) was the charterer of Bo-Truc No. 5 and the operator of the offshore platform "Zulu."

[3]The stipulation provided:

"(4) This litigation shall proceed to trial, without a jury, in order that the Court might determine the following:

(a) The liability to the plaintiff, if any, on the

The District Court was unpersuaded by Chevron's arguments on both the indemnity contract and the P&I policy and entered judgment against Chevron for the full amount paid by Cheramie in settlement of the claim for maintenance and cure and damages asserted by Lanasse.

What Happened to Lanasse

As usual, all but forgotten is the event which brings all this about, certainly as to Lanasse's problems. Cf. *United Services Automobile Association v. Russom*, 5 Cir., 1957, 241 F.2d 296.

On April 25, 1964 M/V Bo-Truc No. 5 was operating in the Gulf of Mexico under a written time charter between Cheramie and Chevron.[4] Chevron ordered the

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part of Cheramie Bo-Truc No. 5, Inc., and/or Chevron Oil Company The California Company Division;

(b) The validity of the indemnity claims asserted by and between Cheramie Bo-Truc No. 5, Inc. and Chevron Oil Company The California Company Division;

(c) The applicability of the insurance afforded Chevron Oil Company The California Company Division under the policy of insurance covering the vessel Bo-Truc No. 5."

[4]The relevant terms of the time charter are as follows:

"Owner hereby warrants that the said vessel is now, and at all times during the life of this charter will be, maintained by owner at owner's expense properly staunch, strong, and in all respects seaworthy, and in good repair and running condition. * * * Owner shall man, operate, and navigate the vessel. * * * Responsibility for the management and navigation and

vessel to proceed to its fixed off-shore production platform "Zulu" for the purpose of moving a welding machine from the west to the east side of the structure. The weather was clear, Bo-Truc No. 5 was heavily ballasted and riding well on the water, there was only a little wind and a few small swells, and the only cargo on deck consisted of three mud pallets which had been stacked 10 to 12 feet behind the wheelhouse[5] in order to make room for the welder.

After transferring a supply of potable water to the platform, the vessel proceeded to the west side of the rig where without incident Chevron's crane operator, Plaisance, lowered the welding machine onto the after-

operation of the vessel shall remain at all times in the owner. * * * Owner hereby agrees to indemnify and hold harmless The California Company against all claims * * * as well as against any and all claims for damages, whether to person or property, and howsoever arising in any way *directly* or *indirectly connected with the possession, navigation, management, and operation of the vessel.* During the life of this charter, owner will, at its own expense, provide and maintain insurance covering all liabilities which might arise from the possession, management manning, navigation, and operation of the vessel, which said policies shall be in form and amount, and with companies as required and approved by The California Company; and on which policies The California Company shall, if it so elects, be included as party assured." (Emphasis added)

Needless to say, this standard-form scenario was written, produced and directed by Chevron on a printed form of charter.

[5]The District Court's findings establish that the pallets were not in a position to interfere with the operations.

deck of Bo-Truc No. 5. While the machine was being secured and Bo-Truc No. 5 moved to the other side of the platform, Plaisance crossed to the east side, positioned himself at the controls of the crane located there, and proceeded to lower the line and hook. His view of the waiting vessel was clear and unobstructed.

When the hook had been lowered it was caught by a deckhand and handed to Lanasse, who proceeded to attach it to an eye on top of the welding machine. Although there is conflicting testimony as to what followed, the District Court found — and Chevron does not seriously challenge these findings — that after the hook was secured but before either man had moved clear, the crane operator began lifting but stopped when the machine was 5 or 6 inches above the deck, causing the load to swing against the starboard railing of the vessel and then back into Lanasse. Plaisance then lowered the machine back onto the deck, and in attempting to get out of the way Lanasse was knocked back and pinned against the pallets. Only his great size and physical strength prevented him from being crushed to death.

The District Court also found that (i) the sole proximate cause of the injury was the negligence of Chevron's crane operator, (ii) the vessel was not unseaworthy and (iii) no member of the vessel's crew was guilty of negligence. While Chevron half-heartedly challenges these findings, we think they are amply supported by evidence in the record that rises way above the Plimsoll line of F.R.Civ.P.52(b). They are not clearly erroneous, and we accept them.

How to Escape from Crane Operator's Negligence

Essentially Chevron's main argument is that even though the mishap was solely the result of its own negligence, any resulting liability fell on Cheramie under the indemnity provision in the time charter (note 4, *supra.*) In addition, Chevron claims its liability was also covered under the terms of a standard P&I policy[6] obtained by Cheramie in accordance with the terms of the charter.

The policy incorporated the typical provision insuring liabilities of the assured as ship shipowner.[7] Coverage

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[6]See Continental Oil Co. v. London Steam Ship Owners' Mut. Ins. Assn., 5 Cir., 1969, 417 F.2d 1030, 1969 A.M.C. 1882, *cert. denied*, 397 U.S. 911, 90 S.Ct. 911, 25 L.Ed. 2d 92.

[7]The policy was written by appellees Royal Insurance Company, Excess-Surplus Lines, Inc. and Lloyd's Lines, Inc., and Lloyd's of London.

It provided:

> "In consideration of the premium and subject to the warranties, terms and conditions herein mentioned, this Company hereby undertakes to pay up to the amount hereby insured and in conformity with lines 5 and 6 hereof, such sums as the assured, *as owner of the Vessels* as per Schedule shall have become legally liable to pay and shall have paid * * *." (Emphasis added)

It also contained the traditional provision:

> "It is expressly understood and agreed if and when the assured has any interest other than as a shipowner in the vessel named herein, in no event shall this Company be liable hereunder to any greater extent than if the assured were the sole owner and entitled to petition for limitation of liability in accordance with present and future law."

Only an owner or owner pro hac vice can limit liability. See 46 U.S.C.A. § 181 *et seq.*

was expressly extended to Chevron as an additional assured and, even more significantly, the underwriters' right of subrogation against Chevron was expressly waived.[8]

The Indemnity Covenant Too Loose

The indemnity provision in the time charter insulated Chevron only against liability for claims "directly or indirectly connected with the possession, management, navigation, and operation" of the vessel. Cheramie does not have a legal responsibility for the consequences of the negligent operation of the crane — the proximate cause of the injury — because, on the facts found, the operation of the crane was not even remotely related to the operation, navigation or management of the vessel. As broad as those terms are to comprehend injuries caused by the operation of the vessel in a practical sense, they do not comprehend an occurrence in which the vessel's sole contribution is to be there as the carrier from which the cargo is being removed.

Even, however, if we were to stretch the limits of the English language to find that somehow the crane operator was "indirectly" engaged in the "operation" of Bo-Truc No. 5, or vice versa, we still could not read the charter clause to blanket Chevron with the claim-

[8] "While the vessel(s) named herein is/are working for any of the following [Chevron] the one for whom the vessel(s) is/are working at any given time is named as an additional assured during that particular time and all rights of subrogation hereunder are waived with respect to the one for whom the vessel(s) is/are working at that particular time."

ed immunity against liability for the negligence of its own employees. As we stated in *Batson-Cook Co. v. Industrial Steel Erectors*, 5 Cir. 1958, 257 F.2d 410, 413, "the purpose to impose * * * this extraordinary liability must be spelled out in unmistakable terms. It cannot come from reading into the general words used the fullest meaning which lexicography would permit." Liability of this sort can arise only from the plainly expressed intention of the parties, manifested by language couched in unmistakable terms,[9] not from a mere after-the-fact judicial inference based solely upon what Chevron claims it intended to say but did not.[10] The lack of concreteness and specificity cannot be cured at this late date by the unilateral contention of one party that it meant to impose unlimited liability on the other side.

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[9] Transcontinental Gas Pipe Line Corp. v. Mobile Drilling Barge Mr. Charlie, 5 Cir., 1970, 424 F.2d 684, 692, *cert. denied*, 1971, 400 U.S. 832, ____ S.Ct. ____, ____ L.Ed.2d ____; Grigsby v. Coastal Marine Service of Texas, Inc., 5 Cir., 1969 412 F.2d 1011, 1039, *cert. dismissed*, 1970, 396 U.S. 1033, 90 S.Ct. 612, 24 L.Ed.2d 531; Standard Oil of Texas v. Wampler, 5 Cir., 1955, 218 F.2d 768, 770; United States v. Seckinger, 5 Cir., 1969, 408 F.2d 146, 150-151, *rev'd on other grounds*, 1970, 397 U.S. 203, 90 S.Ct., 880, 25 L.Ed.2d 224.

[10] As pointed out in *Seckinger, supra*, 408 F.2d at 150, 151, our decisions in Jacksonville Terminal Co. v. Railway Express Agency, Inc., 5 Cir., 1961, 296 F.2d 256, *cert. denied*, 369 U.S. 860, 82 S.Ct. 949, 8 L.Ed.2d 18 and American Agricultural Chemical Co. v. Tampa Armature Works, Inc., 5 Cir., 1963, 315 F.2d 856, both of which upheld indemnity, were pronouncements by us of *Erie*-Florida law and were subsequently repudiated by the Florida courts.

P&I Policy Does Not Cover

The Trial Judge was also right in holding that the P&I policy did not cover this claim because Chevron as an additional assured (see note 6, *supra*) did not become liable "as owner of" the vessel. The fact findings — which no one can, or does, challenge — are specific. The vessel and her crew were, on the one hand, absolved from all wrong or unseaworthiness.

Chevron, on the other hand, was found at fault for the manner in which the crane was operated. The vessel offered nothing further than a condition or locale for the accident.

There must be at least some causal operational relation between the vessel and the resulting injury. The line may be a wavy one between coverage and non-coverage, especially with industrial complications in these ambigious amphibious operations plus those arising from the personification of the vessel as an actor in a suit in rem. But where injury is done through non-vessel operations, the vessel must be more than the inert locale of the inquiry.[11] Nothing more occurred

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[11]Unique problems arise in hull, P&I and towers liability situations. See, e.g., United States Fire Insurance Co. v. Gulf States Marine & Mining Co., 5 Cir., 1959, 262 F.2d 565, 1959 A.M.C. 397; Conners Marine Co. v. Northwestern Fire & Marine Ins. Co., S.D.N.Y., 1936, 16 F.Supp. 626, 1936 A.M.C. ———, *aff'd*, 2 Cir., 1937, 88 F.2d 637, 1937, A.M.C. ——. Likewise, policy integration problems arises as between P&I and land based general liability insurance. See, e.g., Employers Mutual Liability Ins. Co. of Wisconsin v. Aetna Ins. Co., E.D. Mich., 1966, 254 F.Supp. 263, 1966 A.M.C. ———.

here, for it was Chevron's actions as a platform operator or as a crane operator that caused the harm, and that does not make it a liability of a shipowner.[12]

Thus far we speak with a single voice and conclude that the Trial Court was correct, with the result that the judgment is affirmed.

P&I Underwriter Pursues Its Assured*

Although the parties have not pressed it here as such, a serious question arises on the face of the policy. We should notice it under the broad reservations of issues to be adjudicated in subparagraph (4)(c) of the stipulation (see Note 3, *supra*).

Chevron is, without a doubt, an additional assured. True, it cannot claim the affirmative benefit of the coverage, since the liability imposed was not that of a shipowner. But the claim as tried is not primarily for affirmative recovery.[13] It is a claim by Cheramie and presumably its underwriters for recoupment of the sums paid to Lanasse, the injured seaman. If, as is likely, the defense of Cheramie was by the P&I un-

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[12]In the Matter of Barge BW 1933 Fire, 1968 A.M.C. 2738 (Arb.). The arbiter, an experienced maritime lawyer of note, wrote an opinion of credit to a Judge — elected, life tenured or Solomonic. Since judicial materials on marine insurance are scarce in America, and there are no Elder Brethren of Trinity House, the business world and Courts must depend heavily upon the usage of adjusters, brokers and underwriters, and most certainly upon the reported, considered arbitration awards of experienced maritime practitioners.

*The following section represents the views of the Chief Judge only.

[13]Of course, Chevron did file impleaders and cross-claims against Cheramie and its underwriters.

derwriters and payment of the settlement was in effect made by them, then clearly the underwriter could not in its own name (or in the more appealing name of its assured) recover against Chevron in the face of the explicit policy provision waiving subrogation. *Great American Ins. Co. v. Gulf Marine Drilling No. 1*, 5 Cir., 1962, 302 F.2d 332; *Insurance Company of North America v. Elgin, Joliet & Eastern Railway Co.*, 7 Cir., 1956, 229 F.2d 705. Indeed, the usual rule independent of a contractual provision is that an underwriter cannot recover by way of subrogation against its own assured. *Builders & Mfrs. Mut. Casualty Co. v. Preferred Automobile Ins. Co.*, 6 Cir., 1941, 118 F.2d 118; *New Amsterdam Casualty Co. v. Homans-Kohler, Inc.*, D.C.R.I., 1970, 310 F.Supp. 374, 376 and cases cited therein. It is all the more applicable when the contract is as specific as it is here.

However, since the issue was not raised in the trial court, I think that we should remand for a determination of whether this protection was waived by Chevron or otherwise foreclosed by a settlement obviously worked out in a practical way by knowledgeable former proctors.[14] If it was, then the whole judgment ought to be affirmed. If not, the holdings on the indemnity

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[14]Much suggests this likelihood, and if so not much was "waived." Someone had to advance the settlement funds. The real contest was over whether it was a P&I responsibility or that of Chevron's other liability insurers. See note 3, *supra*. Had Chevron (or its liability insurers) advanced the funds, it is clear that neither Cheramie nor its P&I underwriters would be liable for reimbursement. Had it declined to make the advance, this could have led to an impasse forcing the case to trial *vis-a-vis* Lanassee, Chevron and Cheramie. In that event, Chevron would have been the loser.

clause and affirmative coverage under the P&I policy should stand affirmed, with such disposition thereafter as might be appropriate.

AFFIRMED.

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 31130

PORPHIRE LANASSE,
Plaintiff-Appellee,
versus

TRAVELERS INSURANCE COMPANY, ET AL,
Defendants-Appellees,
and

THE CALIFORNIA COMPANY,
Defendant-Third Party
Plaintiff-Appellant,
versus

ROYAL INSURANCE COMPANY,
EXCESS-SURPLUS LINES, INC., and/or
UNDERWRITERS AT LLOYD'S, LONDON, ET AL,
Third Party Defendants-
Appellees.

Appeal from the United States District Court for the Eastern District of Louisiana

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ON PETITION FOR REHEARING AND PETITION FOR REHEARING EN BANC

(Opinion Oct. 19, 1971, 5 Cir., 1971, ___ F.2d ___).

(January 12, 1972)

Before BROWN, Chief Judge, INGRAHAM and RONEY, Circuit Judges.

PER CURIAM: The Petition for Rehearing is DENIED and no member of this panel nor Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35 Federal Rules of Appellate Procedure; Local Fifth Circuit Rule 12) the Petition for Rehearing En Banc is DENIED.